

REMARKS**I. Introduction**

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1-44, 50-51, 53-64 and 66 are requested to be cancelled. The cancellation of claims does not constitute acquiescence in the propriety of any rejection set forth by the Examiner. Applicants reserve the right to pursue the subject matter of the canceled claims in subsequent divisional applications.

A detailed listing of all claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented, with an appropriate defined status identifier.

Upon entry of this Amendment, claims 45-49, 52, 65 and 67-68 will remain pending in the application.

II. Response to Issues Raised in Decision by the Board**a. Claim Rejections - 35 U.S.C. § 112, First Paragraph**

Claims 45, 47-49, 52, 54-56 and 66-68 were rejected by the Examiner under 35 U.S.C. § 112, first paragraph for lack of written description. The Board reversed the Examiner's rejection.

b. Claim Rejections - 35 U.S.C. § 103

Claims 54 and 66 were rejected by the Examiner under 35 U.S.C. § 103 as being obvious over Hillier accession N933160. Applicants have canceled claims 54 and 66. Therefore the rejection is moot.

c. Claim Rejections – 37 C.F.R. § 1.196(b)

Claims 55 and 56 were rejected by the Board as being obvious over Hillier accession N933160 under 35 U.S.C. § 103(a). Applicants have canceled claims 55 and 56. Therefore the rejection is moot.

d. Issues Under Double Patenting

i. Rejection of Claims 45-49 and 52 over claims 1-9 of U.S. Patent No. 5,922,567

Claims 45-49 and 52 were rejected under the judicially created doctrine of obviousness-type double patenting as being allegedly unpatentable over claims 1-9 of U.S. Patent No. 5,922,567 (“the ‘567 patent”).

Attached herewith is a terminal disclaimer which disclaims the terminal part of the term of any patent granted on the captioned patent application which would extend beyond the full statutory term, as shortened by any terminal disclaimer, of the ‘567 patent. Therefore, the rejection is moot.

ii. Rejection of Claims 45-49 and 52 over claims 1-9 of U.S. Patent No. 6,001,598

Claims 45-49 and 52 were rejected under the judicially created doctrine of obviousness-type double patenting as being allegedly unpatentable over claims 1-9 of U.S. Patent No. 6,001,598 (“the ‘598 patent”).

Attached herewith is a terminal disclaimer which disclaims the terminal part of the term of any patent granted on the captioned patent application which would extend beyond the full statutory term, as shortened by any terminal disclaimer, of the ‘598 patent. Therefore, the rejection is moot.

CONCLUSION

The present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant(s) hereby petition(s) for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

10/28/04

Date

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 945-6142
Facsimile: (202) 672-5399

Eve L. Frank

Eve L. Frank
Attorney for Applicant
Registration 46,785